

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EVAN JOHNSON, JOSH GRAY, and  
DYLAN COOK,

Plaintiffs,

v.

HYTECH POWER, LLC., a Washington  
limited liability company; TOM GIBBONS,  
THE ESTATE OF S.B. JOSEPH CLARK;  
CHASE C. ENGELHART and MARGARET  
A. CLARK, Co-Personal Representatives of  
the ESTATE OF S.B. JOSEPH CLARK,  
Deceased; CHASE C. ENGELHART,  
individually; THOMAS GIBBONS,  
individually and his marital community with  
JANE DOE GIBBONS, his spouse;  
AVIATION PARTNERS, INC., a Washington  
corporation; APB WINGLETS COMPANY,  
LLC, a Foreign Limited Liability Company;  
and AVIATION PARTNERS BOEING  
WINGLETS II, LLC, a multiemployer health  
plan,

Defendants.

No. 2:20-cv-01676-RAJ

AMENDED COMPLAINT FOR  
VIOLATION OF THE CONSOLIDATED  
OMNIBUS BUDGET RECONCILIATION  
ACT ("COBRA") AND UNPAID WAGES

AMENDED COMPLAINT FOR VIOLATION OF THE  
CONSOLIDATED OMNIBUS BUDGET  
RECONCILIATION ACT ("COBRA") AND UNPAID  
WAGES - 1

{23429/30927/V1573486.DOCX}

LASHER  
HOLZAPFEL  
SPERRY &  
EBBERSON

ATTORNEYS AT LAW  
2600 TWO UNION SQUARE  
601 UNION STREET  
SEATTLE WA 98101-4000  
TELEPHONE 206 624-1230  
Fax 206 340-2563

EVAN JOHNSON, JOSH GRAY, and DYLAN COOK (collectively, “Plaintiffs”), hereby sue Defendants named in the caption above and allege as follows:

# **I. PARTIES**

1. Plaintiff Evan Johnson (“Johnson”) is, and at all times mentioned herein has been, an individual residing in King County, Washington, and at all relevant times was employed by Defendant HyTech Power, LLC.

2. Plaintiff Josh Gray (“Gray”) is, and at all times mentioned herein has been, an individual residing in King County, Washington, and at all relevant times was employed by Defendant HyTech Power, LLC.

3. Plaintiff Dylan Cook (“Cook”) is, and at all times mentioned herein has been, an individual residing in King County, Washington, and at all relevant times was employed by Defendant HyTech Power, LLC.

4. Plaintiffs have standing to bring an ERISA action under 29 U.S.C. § 1132(a)(1)(B), 29 U.S.C. § 1132(a)(3), and federal common law established pursuant to ERISA.

5. Defendant HyTech Power, LLC (“HyTech”) is a Washington limited liability company, and the former employer of Plaintiffs. HyTech provided a number of benefits for employees including, through Regence BlueShield, group health insurance benefits (the “Plan”). The Plan is pursuant to the Employment Retirement Security Act of 1974 (“ERISA”) and is designed to provide health benefits to eligible employees. Plaintiffs were at all relevant times covered participants, as that term is defined by ERISA, 29 U.S.C. § 1002(7), in and beneficiaries of the Plan. Upon information and belief, Hytech, as the employer, may also be the Plan Sponsor or Plan Administrator as provided by 29 U.S.C. § 1002(16) and a fiduciary under ERISA.

6. Defendant Thomas (Tom) Gibbons (“Gibbons”) is a married person who resides in

King County, Washington with his spouse Jane Doe Gibbons. Gibbons is, and was at all material times, a duly appointed director on the HyTech Board. Gibbons was appointed to the Board by JCAI. After S.B. Joseph Clark's death, Gibbons replaced Clark as the chairman of the Board. All Gibbons' actions alleged in this Complaint were done for himself while he was married and were intended to benefit his marital community.

7. Defendants CHASE C. ENGELHART and MARGARET A. CLARK are the court-appointed Co-Personal Representatives of the Estate of S.B. Joseph Clark, Deceased, King County Superior Court no. 20-4-02154-4 SEA (the "Estate").

8. Defendant Chase C. Englehart is an unmarried person residing in King County, Washington and is and was at all material times a duly appointed director on HyTech's Board.

9. Defendant The Estate of S.B. Joseph Clark, Deceased, is a probate estate opened in King County, Washington, under Superior Court no. 20-4-02154-4 SEA (the "Estate").

10. Defendant APB Winglets Company, LLC, a foreign limited liability company, doing business as Aviation Partners Boeing ("APB") is and at all relevant times hereto was is a Delaware state corporation registered to do business in Washington state (UBI #: 601 969 482). On information and belief, the Plan's health benefits are underwritten and administered by APB, which was the "administrator" or "sponsor" of the Plan within the meaning of 29 U.S.C. § 1002(16). APB is a fiduciary under ERISA.

11. Defendant Aviation Partners, Inc., a Washington corporation, ("API") is a corporation organized and existing under the laws of the State of Washington. Health insurance for HyTech employees was provided through API, which was the "administrator" or "sponsor" of the Plan within the meaning of 29 U.S.C. § 1002(16). API is a fiduciary under ERISA.

12. Defendant Aviation Partners Boeing Winglets II, LLC, ("APB Winglets II") which

has been identified in the Plan as the group contracting for health care benefits with Regence BlueShield for its employees. APB Winglets II is believed to be the “administrator” or “sponsor” of the Plan within the meaning of 29 U.S.C. § 1002(16). APB Winglets II is a fiduciary under ERISA.

13. At all relevant times herein, ERISA imposes: “higher-than-marketplace quality standards on insurers. It sets forth a special standard of care upon a plan administrator, namely, that the administrator ‘discharge [its] duties’ in respect to discretionary claims processing ‘solely in the interests of the participants and beneficiaries’ of the plan, [ERISA] § 1104(a)(1).” *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105, 128 S.Ct. 2343, 2350, 171 L.Ed.2d 299 (2008).

## **II. JURISDICTION AND VENUE**

14. Jurisdiction of the federal claims in this action arises pursuant to the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. § 1001, et seq., 29 U.S.C. § 1132(a)(1)(B), (3), and (e)(1); this Court has original jurisdiction over federal questions presented in this action pursuant to 28 U.S.C. § 1331.

15. Venue is appropriate in this judicial district under 29 U.S.C. § 1132(e)(2) because a defendant resides or may be found in or does substantial business in the Western District of Washington and because the breach took place in this District.

16. The Court has supplemental jurisdiction over the wage claim portion of the subject matter of this action pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

## **III. BACKGROUND FACTS**

17. S.B. Joseph Clark (“Clark” or “Decedent”) was the Chairman of the Board of HyTech commencing June 14, 2018. Clark died on March 30, 2020 and was replaced as Chairman shortly thereafter by Gibbons.

18. On June 14, 2018 HyTech assumed an obligation to pay \$7,500 in unpaid deferred

1 compensation (\$7,500) to Mr. Johnson in an HTP Assignment and Contribution Agreement at §1.3.  
 2 HyTech, therefore, has successor liability to pay the unpaid wages owed to Mr. Johnson.

3  
 4 19. Both the salary and deferred compensation that was due to Johnson were set forth in  
 5 the budget (“Budget”) attached to the June 14, 2018 HyTech limited liability company agreement  
 6 (“LLC Agreement”).

7 20. The LLC Agreement provided the chief executive officer’s salary could not be reduced  
 8 without a supermajority vote of HyTech’s board of directors (“Board”). A supermajority vote of the  
 9 Board was defined as at least 4 Board members affirmatively voting in favor of a proposed action.

10 21. The LLC Agreement also provided that any material deviation from the Budget  
 11 required a supermajority vote of the Board.

12 22. Clark, Gibbons, and Englehart decided, without obtaining a supermajority board vote  
 13 as required by the HyTech LLC Agreement, to materially deviate from HyTech’s budget and reduce  
 14 Evan Johnson’s (HyTech’s Chief Technology Officer) agreed-upon salary from \$20,000 per month  
 15 (\$240,000 annually) to \$10,000 per month (\$120,000 annually) for the last 15 months of Johnson’s  
 16 employment with HyTech. HyTech owes Johnson \$150,000 in unpaid wages from his employment  
 17 with HyTech and not to pay Johnson the deferred compensation that HyTech had agreed to pay him.

18 23. Plaintiff Johnson performed services for HyTech and was not paid by HyTech for  
 19 those services or for the deferred compensation to which he was entitled due to Clark’s, Gibbons’,  
 20 and Englehart’s conscious and intentional decision not to pay Johnson.

21 24. RCW 49.52.070 extends liability to pay unpaid wages to “any officer, vice principal,  
 22 or agent of any employer who shall violate any of the provisions of RCW 49.052.050(1) and (2),”  
 23 which includes willfully not paying any employee unpaid wages, including deferred compensation.

24 25. RCW 49.52.070 also requires a court to award exemplary damages of twice the  
 25  
 26

1 amount of an employee's unpaid wage claim, plus interest and attorney fees.

2 26. The King County Superior Court entered an Order Admitting Will to Probate,  
3 Appointing Personal Representatives, and Granting Nonintervention Powers in the Estate of S.B.  
4 Joseph Clark, Deceased, under King County Superior Court no. 20-4-02154-4 SEA on April 23, 2020.

5 27. Evan Johnson has a claim against the Decedent's Estate for: \$15,000 in assumed  
6 deferred compensation, plus \$300,000 in guaranteed compensation, plus \$60,000 for 6 weeks'  
7 vacation, for a total of \$375,000, plus interest and attorney fees.

8 28. All Plaintiffs were employees of HyTech.

9 29. Plaintiffs and their dependents were enrolled in a medical benefits plan ("Plan")  
10 through Plaintiffs' employer HyTech.

11 30. The Plan was sponsored by either API, APB, or APB Winglets II.

12 31. The Plan was administered by either API, APB, or APB Winglets II.

13 32. During the relevant time, the employers had more than 20 employees.

14 33. It is believed and therefore averred that API, APB, or APB Winglets II was designated  
15 as the Plan administrator or sponsor of the multiemployer plan.

16 34. On April 30, 2020, HyTech terminated the employment of all Plaintiffs without notice.  
17 All medical benefits for Plaintiffs and their dependents, including health, dental, and vision insurance,  
18 was canceled effective April 30, 2020, without notice to Plaintiffs at that time.

19 35. Plaintiffs continued to conduct testing on behalf of HyTech using heavy equipment  
20 and putting themselves at risk of personal bodily injury, during May of 2020.

21 36. Plaintiffs did not receive any election notices offering temporary continuation of their  
22 health insurance coverage benefits under COBRA within 60 days of termination of their health,  
23 dental, and vision insurance coverage on April 30, 2020.

37. Plaintiffs learned of the termination of their health, dental, and vision insurance coverage benefits not until the week of July 6, 2020. No Defendant provided any of the Plaintiffs with a notice of continuation benefits under COBRA.

38. One or more Plaintiffs or one or more of their covered dependents or immediate family member(s) incurred medical expenses after April 30, 2020, which Plaintiff or Plaintiffs had to pay out of pocket due to lack of insurance coverage.

39. As a direct and proximate result of Defendants' conduct described above, Plaintiffs suffered damages in the nature of lost past and future wages and benefits and medical expenses.

**FIRST CAUSE OF ACTION:  
Johnson's Claim for unpaid wages**

40. Plaintiffs re-allege and incorporate in this cause of action the allegations contained in paragraphs 1 through 39, above.

41. Defendants HyTech, Engelhart, and Gibbons intentionally withheld employment compensation from Johnson contrary to RCW 49.52.050 and .070.

42. Johnson is entitled by statute to attorney fees, interest, and double exemplary damages.

43. The claim for intentionally and wrongfully withheld employment compensation arises out of the same common nucleus of operative facts as the claim for COBRA notice violations.

44. Johnson seeks a judgment against the Estate pursuant to RCW 11.40.100(1).

**SECOND CAUSE OF ACTION  
Wrongful denial of COBRA coverage under 29 U.S.C. §§ 1161 et seq. and 1132.**

45. Plaintiffs re-allege paragraphs 1 through 44, above.

46. The termination of the Plaintiffs' employment by HyTech on April 30, 2020 was a qualifying event that triggered COBRA coverage under ERISA.

1           47.     At the termination of the Plaintiffs' medical and dental benefits, they and their families  
2 were entitled to continuation coverage pursuant to IRC Section 4980B, ERISA Sections 601-608 and  
3 under any other applicable law as if the termination date was the date on which such medical and  
4 dental benefits expired.

5  
6           48.     Defendants HyTech, Tom Gibbons, API, APB, and/or APB Winglets II wrongfully  
7 denied Plaintiffs and their dependents continuation health coverage following the occurrence of the  
8 qualifying event in April, 2020, in violation of 29 U.S.C. §§ 1161 and applicable federal regulations.

9  
10                               **THIRD CAUSE OF ACTION**  
11           **COBRA notice violations (failure to provide notice of continuation benefits) under 29**  
12                               **U.S.C. §§ 1166 and 1132.**

13           49.     Plaintiffs re-allege paragraphs 1 through 48, above.

14           50.     29 U.S.C. § 1161(a) requires the plan sponsor of each group health plan to provide  
15 notice that each qualified beneficiary who would lose coverage under the plan as a result of a  
16 qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage  
17 under the plan.

18           51.     HyTech, API, APB, and/or APB Winglets II failed to provide such election notices or  
19 paperwork to the Plaintiffs, who were affected employees, in violation of 29 U.S.C. § 1166 and  
20 applicable federal regulations, and the Plaintiffs never received such election notices offering  
21 temporary continuation of their health insurance coverage and stating that they have a right to  
22 COBRA coverage.

23           52.     Pursuant to ERISA §§ 601-608, 29 U.S.C. § 4980B, Plaintiffs are entitled to recover  
24 the cost of medical expenses incurred during the 18-month period beginning April 30, 2020.

25           53.     Under ERISA § 502(c)(1), 29 U.S.C. § 1132(c)(1), Plaintiffs are entitled to receive up  
26 to \$110 per Plaintiff per day that Plaintiffs were not provided with the required initial COBRA notice



1 or the COBRA election notice.

2  
3 **FOURTH CAUSE OF ACTION**  
4 **Attorney fees and costs under ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1)**

5 54. Plaintiffs re-allege paragraphs 1 through 53, above.

6 55. Plaintiffs are entitled to an award of their applicable attorney fees and costs under  
7 ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1).  
8

9  
10 **DAMAGES**

11 56. Plaintiffs re-allege paragraphs 1 through 55, above.

12 57. As a result of Defendants' actions, Plaintiffs have lost benefits due under the Plan.

13 58. As a result of Defendants' actions, Plaintiffs have incurred out-of-pocket medical  
14 costs and other economic loss.

15 59. As a result of Defendants' actions, Plaintiff Evan Johnson is entitled to intentionally  
16 withheld employment compensation, attorney fees, interest, and double exemplary damages.  
17

18  
19 **PRAYER FOR RELIEF**

20 WHEREFORE, having alleged the foregoing as its cause of action, the Plaintiffs  
21 request relief as follows:

- 22 A. Judgment in favor of Johnson and against HyTech, Engelhart, Gibbons, and the Estate,  
23 jointly and severally for \$375,000;  
24  
25 B. The cost of medical expenses incurred by Plaintiffs and their dependents or other eligible  
26 family members during the 18-month period beginning April 30, 2020.

- 1 C. An award of \$110 per Plaintiff per day that Plaintiffs were not provided with the required  
2 initial COBRA notice or the COBRA election notice.  
3  
4 D. An award of prejudgment interest at 12%, or the highest rate allowed by law;  
5  
6 E. Costs of suit and other disbursements incurred by the Plaintiff;  
7  
8 F. An award of interest on the judgment at the highest rate allowed by law;  
9  
10 G. An award of reasonable attorneys' fees to the extent allowed by law; and  
11

12 Such other and further relief as the Court deems just and proper, including injunctive relief.

13 DATED this 25<sup>th</sup> day of May 2021.

14 LASHER HOLZAPFEL SPERRY & EBBERSON  
15 PLLC

16 /s/ Sean V. Small

17 /s/ Paul J. Spadafora

18 By \_\_\_\_\_

19 Sean V. Small, WSBA #37018

20 Paul J. Spadafora, WSBA #49777

21 Attorneys for Plaintiffs  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2021, I caused the foregoing pleading to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel:

Alexander A Baehr  
SUMMIT LAW GROUP  
315 5TH AVE S  
STE 1000  
SEATTLE, WA 98104  
Email: alexb@summitlaw.com

Christopher T Wion  
SUMMIT LAW GROUP  
315 5TH AVE S  
STE 1000  
SEATTLE, WA 98104  
Email: chrisw@summitlaw.com

Bruce W Leaverton  
KARR TUTTLE CAMPBELL  
701 FIFTH AVE  
STE 3300  
SEATTLE, WA 98104  
Email: bleaverton@karrtuttle.com

Daniel T Hagen  
KARR TUTTLE CAMPBELL  
701 FIFTH AVE  
STE 3300  
SEATTLE, WA 98104  
Email: dhagen@karrtuttle.com

Nicholas Peter Gellert  
PERKINS COIE (SEA)  
1201 3RD AVE STE 4900  
SEATTLE, WA 98101-3099

1 NGellert@perkinscoie.com

2 Deborah Joyce Phillips  
3 PERKINS COIE (SEA)  
4 1201 3RD AVE STE 4900  
5 SEATTLE, WA 98101-3099  
djphillips@perkinscoie.com

6 Mark A Bailey  
7 KARR TUTTLE CAMPBELL  
8 701 FIFTH AVE  
9 STE 3300  
SEATTLE, WA 98104  
Email: mbailey@karrtuttle.com

10 Michael M. Feinberg  
11 KARR TUTTLE CAMPBELL  
12 701 FIFTH AVE  
13 STE 3300  
14 SEATTLE, WA 98104  
Email: mfeinberg@karrtuttle.com

15 Bryan C Taylor  
16 BAKER & HOSTETLER LLP  
17 1420 FIFTH AVE  
18 PO BOX 91302  
19 STE 4200  
SEATTLE, WA 98111-9402  
Email: btaylor@bakerlaw.com

20 Carolyn Robbs Bilanko  
21 BAKER HOSTETLER LLP (SEA)  
22 999 THIRD AVENUE  
23 SUITE 3900  
24 SEATTLE, WA 98104  
Email: cbilanko@bakerlaw.com

25 Douglas W Greene  
26 BAKER HOSTETLER LLP (SEA)  
999 THIRD AVENUE

1 SUITE 3900  
2 SEATTLE, WA 98104  
3 Email: dgreene@bakerlaw.com

4 James Raymond Morrison  
5 BAKER HOSTETLER LLP (SEA)  
6 999 THIRD AVENUE  
7 SUITE 3900  
8 SEATTLE, WA 98104  
9 Email: jmorrison@bakerlaw.com

10 Maren Roxanne Norton  
11 STOEL RIVES (WA)  
12 600 UNIVERSITY ST STE 3600  
13 SEATTLE, WA 98101-3197  
14 Email: maren.norton@stoel.com

15 DATED this 25<sup>th</sup> day of May, 2021 at Seattle Washington

16 /s/ Ellen Krachunis

17 \_\_\_\_\_  
18 Ellen Krachunis  
19 Legal Assistant  
20  
21  
22  
23  
24  
25  
26